

Order 96-3-63

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

SERVED MAR 29 1996

Issued by the Department of Transportation
on the 29th day of March, 1996

Application of

JAPAN AIR LINES COMPANY, LTD.

Docket OST-95-662

for an exemption under 49 U.S.C.
section 40109

ORDER GRANTING EXEMPTION

Summary

In this order we are granting Japan Air Lines Company, Ltd. (JAL), a foreign air carrier of Japan, an exemption from section 41301 of Title 49 of the U.S. Code to conduct scheduled combination services between Sendai, Japan, and Honolulu, Hawaii, through September 20, 1996, subject to a limitation on the permissible frequency of those services.¹

Background

By Order 95-10-21, issued October 13, 1995, we granted JAL Sendai-Honolulu authority through April 1, 1996.² In Order 95-10-21, we stated that we would review the pending issues in our relationship with Japan carefully before deciding on any further extension of JAL's Sendai-Honolulu authority.

Application

By application filed February 9, 1996, JAL seeks to renew for one year the authority granted in Order 95-10-21.

¹ JAL holds a foreign air carrier permit issued by Order 70-8-66. JAL also holds various exemptions to perform specified services between Japan and the United States.

² We had previously granted JAL exemption authority in the Sendai-Honolulu market for a period of fewer than 180 days. See Orders 95-4-31 and 94-10-42.

In support of its request, JAL states that the authority requested is consistent with a 1989 Memorandum of Understanding between the United States and Japan (1989 MOU); it has been designated by the Government of Japan to perform the proposed services; and its services will benefit the traveling public.

Responsive Pleadings

Answers in response to JAL's renewal application were filed by United Air Lines, Inc. and the State of Hawaii.

United urges us to defer action on JAL's request until the Government of Japan approves United's Osaka (Kansai)-Seoul schedules.³ United states that deferral of JAL's request will have the effect of terminating JAL's Sendai-Honolulu authority on April 1 unless Japan is forthcoming with United's Osaka-Seoul authority prior to that date. In support of its position, United states that there has been no progress with Japan on the resolution of United's Osaka-Seoul schedules.⁴

Hawaii supports renewal of JAL's request for a period of not less than one year, and states that the requested authority is consistent with the provisions of the 1989 MOU between the United States and Japan, and that approval of JAL's request will continue to advance the economic interests of Hawaii and the United States.

Reply comments were filed by JAL, Hawaii and Northwest Airlines, Inc.⁵ Each supports renewal of JAL's authority for the full one year term requested.

Decision

We have decided to extend JAL's Sendai-Honolulu exemption authority, effective immediately through September 20, 1996, at the level of three weekly frequencies, as discussed below.⁶ We are making this authority subject to the terms and conditions of the 1989 MOU and JAL's foreign air carrier permit.

³ See Order 95-10-21.

⁴ United incorporates by reference its pleadings filed in response to JAL's request for Tokyo-Kona, Hawaii, authority in Docket OST-95-971.

⁵ Northwest's reply was accompanied by a motion to file an otherwise unauthorized document. We grant Northwest's motion.

⁶ Since the duration of JAL's authority is for a period of fewer than 180 days, this is not a license with reference to an activity of a continuing nature within the meaning of 5 USC 558(c). See 14 CFR Part 377.

While authority for a carrier of Japan to conduct Sendai-Honolulu services is provided for in the 1989 MOU between the United States and Japan, we remain concerned by Japan's failure to award United its bilaterally-authorized Osaka-Seoul authority. We are sympathetic to United's request that we now defer action on JAL's request until Japan is forthcoming with that authority. However, we believe that a limited extension of JAL's authority is the appropriate course of action, and the one which best serves the public interest.

We believe that our action here is in keeping with our commitment carefully to review unresolved issues in our aviation relationship with Japan prior to considering any further extension of JAL's Sendai-Honolulu authority. The authority JAL proposes to extend is an on-going service which the record indicates provides significant economic benefits to Hawaii in the form of tourism and enhanced service benefits to the traveling and shipping public. While we are prepared to extend JAL's Sendai authority, we are not prepared, at this time, to allow JAL to exceed the three weekly frequencies it is currently holding out in the market.⁷ Such action will achieve our goal of maintaining the status quo while we attempt to resolve our outstanding concerns with the Japanese.

ACCORDINGLY,

1. We grant Japan Air Lines Company, Ltd. an exemption from section 41301 of Title 49 of the U.S. Code to permit it to operate up to three round-trip flights per week, transporting persons, property and mail, between Sendai, Japan, and Honolulu, Hawaii;
2. The authority granted above shall be effective from the service date of this order through September 20, 1996;
3. The authority granted in ordering paragraph 1 above is subject to the conditions of Japan Air Lines' foreign air carrier permit (Order 70-8-66) and the 1989 MOU;
4. We grant the motion of Northwest Airlines, Inc. to file an otherwise unauthorized document;

⁷ JAL currently provides two round-trip flights per week between Sendai and Honolulu, with DC-10 aircraft (OAG, Worldwide Edition, February 1996). Commencing in April 1996, JAL is increasing its level of service in the market to three weekly round-trips.

5. To the extent not granted, we deny any additional requests for relief in Docket OST-95-662;

6. We may amend, modify or revoke this authority at any time and without hearing; and

7. We will serve a copy of this order on Japan Air Lines Company, Ltd.; Federal Express Corporation; Northwest Airlines, Inc.; United Air Lines, Inc.; American Airlines, Inc.; the State of Hawaii; the Embassy of Japan in Washington, D.C.; the Department of State (Office of Aviation) and the Federal Aviation Administration (SF-IFO).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
<http://www.dot.gov/dotinfo/general/orders/aviation.html>*

